HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32(2)(b)

Description of the case.

A.O. No. 471 of 2004

U.P.S.R.T.C. . Appellant

Versus

Smt. Janki Devi Paneru & others Respondents

Approved for reporting.

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Not approved for reporting

Date of decision 4-11-06

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 471 of 2004

Uttar Pradesh State Road Transport Corp. through its Regional Manager, Nainital

..... Appellant

versus

1. Smt. Janki Devi Paneru w/o Late Shri M.C. Paneru
2. Sri Chandra Shekhar Paneru w/o late Sri M.C. Paneru
3. Kumari Kiran Paneru d/o Late Sri M.C. Pandru
4. Sri Vijay Paneru s/o Sri M.C. paneru, All residents of Primary Pathshala Subhash Nagar, Haldwani, Nainital

..... Respondents

Sri A.N. Sharma, Advocate for the appellant
Sri Vinay Upadhyaya, Advocate on behalf of Mr. Harendra Belwal for the respondents.

Dated: November 4, 2006

Coram: Hon'ble M.M. GhildiyalJ.
Hon'ble Rajesh Tandon, J.

Hon. Rajesh Tandon, J.

1) This appeal has been preferred against the Award dated 20.9.2004, passed by the Motor Accident Claims Tribunal, Haldwani, District Nainital awarding a sum of Rs.6,67,000/- to the claimants.

2) The claimants Smt. Janki Devi and her minor children preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of the death of Sri Mohan Chandra Paneru in a motor vehicle accident. According to the claimants, the deceased was employed as Bus Conductor in U.P. Road Transport Corporation, Haldwani Depot. On the fateful day on 8.5.2003,

at about 7.30 PM the deceased was coming to his home by Bus No. UP 02C/7140 when he was stepping down from the bus near Labour Court, the bus driver started the bus rashly and negligently due to which Sri Mohan Chandra Paneru fell down and crushed under the back wheel of the bus and died instantaneously. According to the claimants the deceased was getting salary of Rs.7,598/- per month. The claimants have claimed compensation of Rs. Six lakhs.

3) The opposite parties have filed their respective written statements and have submitted that on the day of accident the bus was going to Nainital. Near Degree College, Haldwani, the conductor of the bus gave whistle and the driver stopped the bus. The deceased was in the drunken state due to which he fell down and sustained injuries. The opposite parties have denied that the driver of the bus was in anyway responsible for the accident.

4) In order to prove their case, the claimants have examined claimant P.W. 1, Smt. Janki and P.W. 2 Puran Chand Paneru. The opposite party appellant examined D.W. 1 Chandan Singh, Driver.

5) On the basis of the evidence adduced by the claimants, the Claims Tribunal has held that the accident had taken place due to rash and negligent driving of the Bus.

6) So far as the compensation is concerned the Tribunal has recorded a finding that at the time of accident the age of the deceased was 50 years and he was posted as Conductor. He was getting Rs.7,598/- per month as salary or Rs.90,000/- per annum. After deducting 1/3 of the amount for self expenses of the deceased if he would have been alive, the annual dependency of the claimants on the income of deceased was

held to be Rs.60,000/-. Considering the age of the deceased a multiplier of 11 was selected and thus the amount of compensation was calculated as 60,000 x 11 = Rs.6,60,000/-. A sum of Rs.2,000/- was awarded towards expenses incurred in the funeral of the deceased and a sum of Rs.5,000/- was awarded as consortium. Thus a total amount of compensation of Rs.6,67,000/- was awarded to the claimants along with pendente lite and future interest at the rate of 9% per annum.

7) Sri A.N. Sharma, the learned counsel for the appellant submitted that the Tribunal was also not justified by selecting the multiplier of 11 while awarding the compensation. He has further argued that the amount of compensation paid to the claimants in excessive and the rate of interest is also not justified.

8) We have examined the record in the light of the submissions of the counsel for the appellant. The findings recorded by the Tribunal that the deceased Sri Mohan Chandra died on account of the injuries sustained in the motor vehicle accident on 8.5.2003 at 7.30 PM and that the driver of the offending Bus was responsible for the accident are based on evidence on record. P.W.2 Puran Chand Paneru had categorically stated that he was present in front of Labour Court, Haldwani when accident took place. He has asserted that the accident took place due to the negligence of Bus driver as he started the bus when the deceased was stepping down from the bus.

9) On the close scrutiny of the evidence available on record, we are satisfied that the Tribunal has rightly held that the accident had taken place due to the rash and negligent driving by the Bus driver.

10) The claimants have filed certificate issued by the Regional Manager, U.P. Road Transport Corporation in which it has been mentioned that the deceased was getting Rs.7,5,98/- per month as salary. The heads of pay and allowances are given as under:

Basic pay	4,700.00
Dearness Allowance	2,303.00
Ad hoc pay	10.00
Hill allowance	215.00
House Rent Allowance	340.00
Medical allowance	30.00
Total	Rs. 7,598.00

11) The Claims Tribunal has taken the entire amount of salary for the assessment of compensation, while the amount of house rent allowance and medical allowance are not permissible to be taken for assessing monthly income. Thus the monthly income of the deceased comes to Rs.7,228/- or Rs.86,736/- per annum. Deduction of 1/3 amount i.e. Rs. 28,912/- is to be made for the self expenses of the deceased and as such the annual dependency of the claimants on the income of the deceased comes to Rs.86,736- 28912 = Rs.57,824. At the time of accident the age of the deceased was 50 years and multiplier of 11 selected by the Claims Tribunal cannot be held to be excessive for assessment of compensation in view of that none in the family of the deceased is earning person.

12) Apex Court in the case **U.P.S.R.T.C. vs. Krishna Bala & others [2006 (64) ALR 771]** has highlighted the manner of fixing the appropriate multiplier and computation of compensation and has observed as under:

> "*The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to*

the circumstances of the case and capitalizing the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."

13) However, in a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal should be just and proper in the circumstances of the case. The Apex Court, in the case of **T. N. State Transport Corpn. Ltd. vs. Rajapriya and others (2005) 6 SCC 236** has observed as under:

"8. *The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have not better employment or income or might have lost his employment or income together.*

9. *The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of years' purchase.*

10. *Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In very case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered."*

14) Thus in view of the above multiplier of 11 selected by the Claims Tribunal is just and proper. Thus by multiplying the annual dependency of Rs.57,824/- with 11, the compensation comes to Rs.6,36,064/-. A sum of Rs.2000/- has been awarded for funeral expenses and Rs.5,000/- has been awarded for loss of consortium. Thus the total compensation comes to Rs.6,43,064/-. Thus the amount of compensation awarded by the Claims Tribunal is modified to Rs.6,43,064/-. The rate of interest awarded by the Claims Tribunal requires no interference.

15) Accordingly, the appeal is partly allowed. The amount of compensation awarded by the Claims Tribunal is modified to the extent of Rs.6,43,064/-. The appellant is directed to pay the entire amount of compensation and interest within two months.

16) Any amount deposited in this Court be remitted to the Claims Tribunal concerned.

17) No order as to costs.

(Rajesh Tandon, J.) **(M.M. Ghildiyal, J.)**

Dated: November 4, 2006

*Dhyani